

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

JENNIFER ST. JOHN, individually, and as
personal representative of the Estate of
Steve St. John, deceased,

Plaintiffs,

v.

CIV 08-0229 JCH/KBM

ROBERT WILCOX, M.D. and
GILA REGIONAL MEDICAL CENTER,

Defendants.

ORDER STAYING DISCOVERY

At the request of the parties, I held a telephonic status conference on June 1, 2009. This action was filed almost fifteen months ago, prematurely as to Dr. Wilcox, and was subject to a short stay in the past. *See Docs. 23-25*. Despite the length of time this matter has been pending, counsel for all parties agreed that the settlement conference now set for June 22, 2009 would be futile due to recent developments. Specifically, these developments include: (1) the Estate has yet to answer any of the pending discovery requests; (2) both Defendants have filed

recent motions for summary judgment¹ on the basis that Plaintiff has failed to make any disclosure of a medical expert witness who would testify as to the relevant standard of care; (3) Plaintiff failed to seek an extension of the May 15, 2009 expert disclosure deadline even though counsel for Plaintiff knew a week before that deadline that he had lost his anticipated expert; (4) Plaintiff's counsel stated that he will be filing a Rule 41 motion for voluntary dismissal *without prejudice* of Defendant Wilcox with the intent to refile suit against the doctor before the statute of limitations runs; and (5) both Defendants will *oppose* that motion to dismiss Dr. Wilcox. Given those developments, I vacated the settlement conference. *Doc. 69.*

Moreover, Plaintiff admitted during the status conference that he has no medical expert at this time, and that deficiency is the crux of the more recently filed motions for summary judgment. *See Docs. 64 & 65.* If Judge Herrera denies Plaintiff's forthcoming motion to dismiss Dr. Wilcox and enforces the deadlines set forth in my scheduling order of January 5, 2009, there is a chance that Defendants

¹ On May 5, 2009, I filed Proposed Findings and Recommended Disposition (*Doc. 62*) urging Judge Herrera to deny Defendant Gila's Motion to Dismiss and for Sanctions (*Doc. 53*). I further recommended the Judge Herrera deny Defendant Gila's first motion for summary judgment (*Doc. 52*) if she adopted my recommendation because the motions were interrelated. Although no objections were filed, Judge Herrera has not yet addressed my report and recommendation.

may be granted summary judgment in their favor. Thus, to proceed with discovery on issues unrelated to those motions seems unwise at this juncture.

Wherefore,

IT IS HEREBY ORDERED that Plaintiff serve on Defendants full and complete responses to the outstanding discovery requests no later than June 12, 2009.

IT IS FURTHER ORDERED that with the above exception, discovery is stayed pending further order of the Court.


UNITED STATES MAGISTRATE JUDGE